

INTERVENTION

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BEFORE THE ARIZONA CORPORATION COMMISSION

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CHAIRMAN

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COMMISSIONER

TOM FORESE
COMMISSIONER

ANDY TOBIN
COMMISSIONER

12 **IN THE MATTER THE**) **DOCKET NO. E-01345A-11-0224**
 13 **APPLICATION OF ARIZONA**)
 14 **PUBLIC SERVICE COMPANY FOR**) **THE ENERGY FREEDOM COALITION**
 15 **APPROVAL OF LOST FIXED COST**) **OF AMERICA'S APPLICATION FOR**
 16 **RECOVERY MECHANISM**) **LEAVE TO INTERVENE**

I. Introduction.

17 Pursuant to A.A.C. R14-3-105, the Energy Freedom Coalition of America ("EFCA")
 18 hereby makes its Application for Leave to Intervene (the "Application") in the above-captioned
 19 proceeding (the "Proceeding").

20 EFCA is a solar energy advocacy association. EFCA's membership is made up of solar
 21 companies including, Silevo, Inc., SolarCity Corporation, ZEP Solar, LLC, and NRG Energy,
 22 Inc. ("Members"). These companies are important stakeholders in Arizona's rooftop solar
 23 industry. EFCA's Members are responsible for thousands of residential, school, church,
 24 government and commercial solar installations in the Arizona. Together, EFCA's Members have
 25 brought hundreds of jobs and many tens of millions of dollars of investments to Arizona's cities
 26 and towns. Further, many of EFCA's Members have installed rooftop solar systems within Arizona
 27 Public Service Company ("APS") territory.

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1 On January 15, 2016, APS filed a new Application, requesting that the Arizona Corporation
2 Commission approve a request to permit APS to adjust the amount it collects through its Lost
3 Fixed Cost Recovery (“LFCR”) mechanism (the “Application”). In the Application, APS proposes
4 to utilize the LFCR to bill its customers for and to collect \$46.4 million for the 12-month period
5 commencing in March of 2016 (*See* Application, 2:11-13). All together the LFCR will have been
6 used to recover approximately \$115.28 million from APS customers if the \$46.4 million request
7 is granted (*See* Decisions 74994, 74394, and 73732).

8 By way of background, on May 24, 2012, the ACC issued Decision No. 73183 (the
9 “Order”) adopting a Settlement Agreement entered into between APS and various interest groups
10 (not including EFCA). Among other things, the Order permitted APS to implement the LFCR.
11 (*See* Order, 45:25 – 48:8). Specifically, the LFCR rate is to be adjusted periodically to account for
12 (and recover) unrecovered costs associated with the adoption of energy efficient and distributed
13 generation systems like those sold by EFCA’s Members. (*Id.*, Ex. A thereto at 10-11).

14 In Decision 74202 (December 3, 2013) the ACC authorized the LFCR to be used to charge
15 ratepayers utilizing distributed generation solar devices (“DG Solar”) an additional charge of \$0.70
16 per kW.

17 Users of such systems, *i.e.* the Members’ customers, along with all residential ratepayers
18 will bear additional costs imposed by any adjusted rates. Because the adjustment will specifically
19 impact entities and individuals in the distributed generation industry, EFCA should be permitted
20 to intervene due to the direct and substantial impact any decision will have on it, its Members and
21 its Members’ customers.

22 **II. EFCA is not Prohibited from Intervening by the Settlement**
23 **Agreement.**

24 Initially, the Settlement Agreement does not release any claims possessed by interested or
25 impacted parties like EFCA, nor does it adopt a set of modified rules to be utilized when
26 considering a rate adjustment using the LFCR mechanism. The Arizona Rules of Practice and
27 Procedure Before the Corporation Commission (the “Rules”) state that “[e]xcept as may be
28 otherwise directed by the Commission . . . these Rules of Practice and Procedure *shall govern in*

1 *all cases* before the Corporation Commission” A.A.C. § R14-3-101(A) (emphasis added).
2 Because the Corporation Commission did not adopt or direct application of any other rules in the
3 settlement agreement, Order, or subsequent proceedings, the Rules govern this Proceeding. These
4 Rules expressly permit any party, such as EFCA, that is “directly and substantially affected by the
5 proceedings” to apply to intervene. A.A.C. § R14-3-105(A).

6 Further, even if the Settlement Agreement adopted in the Order prohibited the parties
7 thereto from attempting to intervene in a later proceeding, such prohibition would not bind EFCA
8 or its Members as they were not parties to the Settlement Agreement.

9 For these reasons, no mechanism exists that prohibits EFCA from applying to intervene
10 herein in accordance with the Rules.

11 **III. EFCA, its Members and its Members’ Customers are Directly and**
12 **Substantially Affected.**

13 EFCA Members are responsible for the installation and leasing of a significant number of
14 both residential and commercial distributed generation solar systems installed in APS service
15 territory. As such, EFCA, its Members, and its Members’ customers and potential customers will
16 be directly and substantially impacted and affected by the Proceeding.

17 Each of EFCA’s Members’ customers are APS ratepayers and will be subject to the LFCR.
18 EFCA is therefore entitled to intervene in order to advocate on behalf of its Members and its
19 Members’ current and potential customers, all of whom are directly and substantially affected by
20 the outcome of the Proceeding.

21 **IV. EFCA’s Intervention Can Assist the Commission.**

22 EFCA is uniquely well positioned to offer insight to assist the Commission in its evaluation
23 of the issues in the Proceeding. As an advocacy group representing various solar companies, EFCA
24 has specific knowledge about how the proposed rate increase will impact the distributed generation
25 and energy efficiency marketplace and utility ratepayers in general. EFCA’s participation will also
26 obviate the need for each of its Members to intervene individually and, in so doing, would help
27 streamline the Application process.

1 **V. EFCA’s Intervention Will Not Broaden These Proceedings.**

2 Granting EFCA intervenor status will not unduly broaden the issues or prejudice other
3 parties to the Docket.

4 **VI. The LFCR May Be Unconstitutional.**

5 As a practical matter, the LFCR, a mechanism through which APS has already collected
6 approximately \$68.88 million from ratepayers, is likely unconstitutional as clarified in the decision
7 recently issued by the Arizona Court of Appeals in *Residential Utility Consumer Office (“RUCO”)*
8 *v. Arizona Corp. Comm’n*, 238 Ariz. 8, 355 P.3d 610 (App. 2014), *cert. granted* Feb. 9, 2016. In
9 the *RUCO* decision, the Court considered the constitutionality of a system improvement benefits
10 (“SIB”) mechanism proposed by the Arizona Water Company (“AWC”) and adopted by the
11 Corporation Commission. *Id.* at ¶ 1. Similar to the LFCR, the SIB mechanism provided for annual
12 adjustments to the rates AWC charged its customers to recoup certain capital costs and
13 infrastructure replacement projects between rate cases. *Id.* at ¶¶ 14-15. Ultimately, the Court held
14 that the SIB mechanism violated the “Arizona Constitution’s mandate that the Commission
15 determine and use fair value when setting a monopolistic utility’s rates.” *Id.* at ¶ 50. It then vacated
16 the Corporation Commission’s adoption of the SIB mechanism. *Id.*

17 EFCA contends that the LFCR mechanism is substantially similar to the SIB mechanism
18 and is therefore, unconstitutional pursuant to the *RUCO* decision.¹ Accordingly, EFCA is
19 concurrently filing a Motion for a Procedural Conference seeking an evidentiary hearing on issues
20 raised in the Application and issues relevant to the legality of the LFCR itself. As described in
21 greater detail therein, the ACC and APS face potential liability in continuing to utilize the
22 unconstitutional LFCR mechanism. Due to the potential liability faced by the parties hereto,
23 including the potential levy of unconstitutional LFCR fees on EFCA’s Members’ customers, a
24 hearing should ultimately be held in this Proceeding. If the LFCR is unconstitutional and if
25 amounts collected thereunder to date must be returned to ratepayers, it makes judicial sense to hold
26 a hearing on this issue quickly.

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28 ¹ Note that the Commission recently stayed the enforcement of several previously adopted SIB mechanisms out of
concern for the constitutionality of the mechanism. *See* Docket No.s W-01445A-11-0310; W01445A-12-0348; SW-
01427A-13-0042; W-01427A-13-0043

1 **VII. Service on EFCA.**

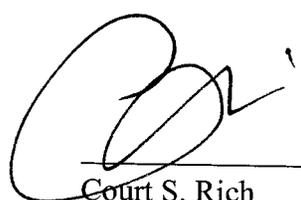
2 Service of all documents or pleadings should be made to EFCA's counsel at the following
3 address:

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8 **VII. Conclusion.**

9 As set forth above, EFCA, its Members, and its Members' current and future customers
10 will be directly and substantially impacted by any adjustment to APS' rates effectuated by the
11 LFCR mechanism. EFCA, as the advocacy group for its Members' interests, should therefore be
12 permitted to intervene on its Members' behalf. For the foregoing reasons, EFCA requests that this
13 Application be approved.

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15 Respectfully submitted this 24th day of February, 2016.

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1 **Original and 13 copies filed on**
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